

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA No.770/96

Calcutta this the 24th day of September, 2002.

Hon'ble Mr. S. Biswas, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl)

Sri Subhash Chander Das & Others

-Applicants

(By Advocate Mrs. K. Banerjee)

-Versus-

Union of India & Others

-Respondents

(By Advocate Ms. R. Basu)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Through this OA applicants, ten in number, have sought for the following reliefs:

"(a) Leave be granted under Rule 4 (5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

(b) Direction may be issued to the respondents to allow the applicants, the benefit of proforma fixation of pay at par with the Junior, Sri Sudhir Kumar Banerjee from stage Sri Banerjee was allowed to enjoy promotion to the post of Head Clerk (425-700 OS/II (Rs.1600-2660) and OS/Grade-I (Rs.2000-3200) on and from 28.9.81, 27.12.82 and 1.1.84 respectively and regularise the cases of each applicant by re-fixation of pay onwards till retirement.

(c) Direction may be issued to revise pension and other retirement benefits to each applicant from date of regularisation and pay of arrears due with interest of 18% per annum from dates actually fell due.

(d) Any other order/orders may be made as considered proper."

2. Applicants were appointed as Clerks Grade-II between 30.10.54 and 2.8.56 whereas respondent No.6, Sudhir Kumar Banerjee w.e.f. 3.11.56. Applicants belong to clerical cadre attached to the Unit Personnel Branch at Sealdah where a cadre was maintained. A seniority list was published where respondent No.6 was shown junior to the applicants. Respondent No.6 remained junior till 1977. Thereafter his seniority has gone upward revision at the time Sh. Banerjee was promoted as Clerk Grade-I in the pay scale of Rs.330-

from 7.2.77 against 10% quota which was not a regular promotion in normal course and his seniority was upgraded in the seniority list on 6.6.77. One N.N. Ghosh, Clerk Grade II was irregularly promoted as Grade-I Clerk in the pay scale of Rs.330-560 from 24.7.61. Applicants filed a case before the High Court of Calcutta praying for stepping up of pay with that of Sri N.N. Ghosh, a junior of the applicants and also against respondent No.6 effective from 24.7.61. As per the decision dated 22.8.84 pay of all the applicants including respondent No.6 were stepped up.

3. Though R-6 has been holding the post of Clerk Grade I since 7.2.77 on promotion preferred to receive promotional benefit in scale of Rs.330-560 enjoyed by N.N. Ghosh from 24.7.61 along with applicants. This was accepted by R-6 from 24.7.61 by stepping up of his pay at par with his juniors. R-6 retired on 28.2.91 on pay of Rs.2675/- higher than the applicants. A representation was made by the applicants which was responded by the respondents through their letter dated 10.7.91, rejecting the request of the applicants. An appeal was preferred on 7.1.92 for reconsideration of the case as the applicants were to retire shortly. Their cases have been recommended by the DPO with favourable remarks contending that an erroneous double benefit has been accorded to R-6. As the applicants have lost their seniority, pay and temporary promotion and also affected in the matter of their pensionary benefits they claim benefit of proforma fixation at par with R-6 in view of circular No.6004 to correct the administrative error but their cases have not been finalised, giving rise to the present OA.

4. Learned counsel has placed reliance on serial No.6004 circular which envisages hardship to non-gazetted staff due to administrative error and loss in seniority and pay. It is contended that where a person has not been promoted because of administrative error and where a person has been promoted but not from the date he should have been, after consideration it is decided that the staff who lost promotion should be assigned correct seniority vis-a-vis his junior already promoted and the pay be fixed at proforma at the stage which the employee has reached and the enhanced pay should be allowed from the date of actual promotion without arrears. Further

placing reliance on Shyam Babu Verma v. Union of India, 1994 (27) ATC 121 it is contended that it is not open to recover the excess amount already paid on account of higher pay scale erroneously given to an incumbent and further in her rejoinder relying upon Railway Board's letter dated 29.1.88 it is contended that no recovery can be effected from Sh. Banerjee on account of the alleged erroneous pay fixation. It is also stated that a note written by the Senior DPO on 27.7.95, it has been decided that as Sh. Banerjee was placed higher than his seniors, claim of stepping up of the pay of the applicants cannot be denied. It is further stated that the applicants have been discriminated vis-a-vis respondent No.6 arbitrarily, which is violative of Articles 14 and 16 of the Constitution of India and as the juniors got the higher pay scale applicants should also be brought at par and proforma fixation is to be done which would benefit them in their retiral benefits. She also files the list of dates and events in chronological order and contended that the High Court granted stepping up of pay in favour of the applicants at par with N.N. Ghosh the date from which Sh. Ghosh was regularly promoted R-6 took the benefit of stepping up from 24.7.61 than the promotion under 10% quota as Grade-I w.e.f. 7.2.77. As such the seniority position should have been reassigned and the seniority and the pay should have been refixed in the higher grade vis-a-vis R-6 but this has not been done by the respondents, resulting in double benefit to Banerjee.

5. On the other hand, respondents denied the contentions of the applicants and further stated that as the promotional benefits accorded to R-6 were erroneous the Railway Administration has ordered for recovery of the excess benefits accorded to him and the same is under process. It is stated that the applicants on the basis of a wrong action cannot claim any benefit and as their junior has been wrongly accorded the double benefits and setting up of the pay applicants cannot have any indefeasible right to claim the same benefit which is contrary to law.

6. We have carefully considered the rival contentions of the parties and perused the material on record. In view of the decision of the Apex Court in Puranjit Singh v. U.T. of Chandigarh, AIR 1984 SC 2732 wherein it has been held that notings in the departmental files do not create rights in favour of the employees, the contention of the applicants that as Senior DPO has by his letter dated 27.7.95 accepted the claims of the applicants, they are entitled for the same, cannot be countenanced.

7. In so far as contention of the applicants that as R-6, admittedly being junior has been accorded the benefit of stepping up of pay from 24.7.61 and has enjoyed double benefit the applicants being seniors are to be given the benefit of stepping up of pay and their resort to circular No.6004, which envisages that an administrative error can be rectified to give the benefit, cannot be countenanced in view of the decision of the Apex Court in A.K. Sharma v. Union of India, JT 1999 (1) SC 113, where it is held that mistake committed by the respondents could not confer any right contrary to the recruitment rules.

8. Having regard to the averments of the respondents that as R-6 was allowed the benefit erroneously and they have decided to recover the amount the contention of the applicants that belatedly it is not possible under the rules and in view of the decision of the Apex Court (supra) to recover the excess amount already given to R-6 would entitle the applicants to claim the same benefits, cannot be sustained in the eye of law. Whether or not the excess benefits though recoverable can be recovered or not from R-6, but the fact remains is that R-6 was erroneously extended the same benefits contrary to the recruitment rules to which he was not legally entitled, it is not open for the applicants to seek an indefeasible right or claim against a wrong action, admittedly on record, extended to the juniors. We also find from the letter of the respondents dated 6.5.94 that promotion of R-6 as OS Grade-II and Grade-I found to be irregular, not covered by the rules and necessary action in

this regard has been ordered. In this view of the matter applicants have no rightful claim to be accorded the reliefs prayed for.

9. In the result and having regard to the reasons recorded above, we do not find any merit in the OA, which is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

S. Biswas

(S. Biswas)
Member(A)

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